

June 24, 2003

AOR 2003-30

Benjamin L. Ginsberg  
(202) 457-6405  
bginsberg@pattonboggs.com

Federal Election Commission  
Office of the General Counsel  
999 E. Street, N.W.  
Washington, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL  
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Dear Commissioners:

On behalf of the Fitzgerald for Senate Committee ("Committee") and Senator Peter Fitzgerald, this letter seeks an Advisory Opinion pursuant to 2 U.S.C. § 437f concerning the permissible uses of contributions designated or attributed to the 2004 primary election.

Senator Fitzgerald announced on April 15, 2003 that he would not seek re-election to the United States Senate from Illinois in 2004. Prior to this date, he had been an active candidate for re-election, raising approximately \$2.7 million<sup>1</sup> since the 1998 election. As of March 31, 2003, the Committee had approximately \$980,000 in cash-on-hand (including a segregated 2004 general election account of approximately \$312,000) and \$2.9 million in net liabilities, of which approximately \$2.1 million was owed to LaSalle Bank, N.A. pursuant to an extension of credit made to finance the 1998 primary and general election campaigns guaranteed by Senator Fitzgerald.

The Committee is now returning to donors all funds contributed for the 2004 general election.<sup>2</sup> The Committee seeks guidance on various options being contemplated for the remaining cash-on-hand, including a combination of the following:

<sup>1</sup> Money raised during that period included funds designated or attributed as follows: approximately \$302,000 for 1998 primary debt retirement, \$334,000 for 1998 general debt retirement, \$1.7 million for primary 2004 and \$312,000 for general 2004.

<sup>2</sup> Because Senator Fitzgerald will not be a general election candidate, the Committee is refunding all contributions designated or attributed to the 2004 general election or re-designating these contributions for debt retirement as permitted and to the extent contributors have not already met the contribution limits for the 1998 elections. 11 CFR 110.1(b)(3)(i); 102.9(e)(3).

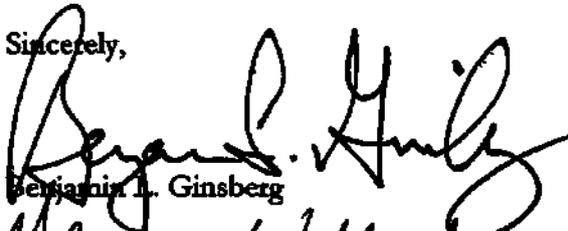
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- (1) donations to organizations described in section 170(c) of the Internal Revenue Code;
- (2) transfers to national, state or local party committees;
- (3) expenditures to reduce the Committee's net debts outstanding and, in particular, the indebtedness to LaSalle Bank, N.A. arising from the 1998 primary and general elections; and
- (4) refunds to contributors.

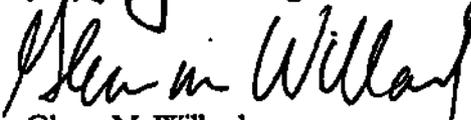
In addition, the Committee seeks to confirm that 2 U.S.C. 441a(j) and 11 CFR 116.11 (repayment of liabilities incurred after the effective date of BCRA) would have no application to the retirement of indebtedness incurred during the 1998 election cycle.

Please advise the Committee as to its ability under the FECA and BCRA to apply its remaining cash-on-hand for each of the purposes mentioned above. Thank you.

Sincerely,



Benjamin L. Ginsberg



Glenn M. Willard



**FEDERAL ELECTION COMMISSION**

**Washington, DC 20463**

**July 18, 2003**

**Benjamin L. Ginsberg, Esq.  
Glenn M. Willard, Esq.  
Patton Boggs, LLP  
2550 M Street, NW  
Washington, DC 20037-1350**

**Dear Messrs. Ginsberg and Willard:**

**This refers to your letter dated June 24, 2003, on behalf of the Fitzgerald for Senate Committee ("Committee") and Senator Peter Fitzgerald, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations to the Committee's proposed uses of contributions designated or attributed to the 2004 primary election.**

**You state that Senator Fitzgerald announced on April 15, 2003 that he would not seek re-election to the United State Senate, but that prior to that date he had been an active candidate for re-election and had raised approximately \$2.7 million since the 1998 election. You indicate that, as of March 31, 2003, the Committee had approximately \$668,000 in cash-on-hand (excluding the amount in a segregated 2004 general election account) and \$2.9 million in net liabilities, of which approximately \$2.1 million was owed to LaSalle Bank, N.A., pursuant to an extension of credit provided to finance Senator Fitzgerald's 1998 primary and general election campaigns. You also state that Senator Fitzgerald provided a personal guarantee to secure the credit from LaSalle Bank, N.A. You assert that the Committee is refunding all contributions designated or attributed to the 2004 general election campaign or re-designating these contributions in accordance with the requirements of the Act and Commission regulations.**

**You request guidance on "various options being contemplated" for the remaining cash-on-hand, including:**

- (1) donations to organization described in section 170(c) of the Internal Revenue Code;**
- (2) transfers to national, State or local party committees;**

- (3) expenditures to reduce the Committee's net debts outstanding and, in particular, the indebtedness to LaSalle Bank, N.A. arising from the 1998 primary and general elections; and
- (4) refunds to contributors.

In addition, you seek clarification as to whether 2 U.S.C. 441a(j) and 11 CFR 116.11 would apply to retirement of indebtedness incurred during the 1998 election cycle.

The Act authorizes the Commission to issue an advisory opinion request in response to a "complete written request" from any person about a specific transaction or activity by the requesting person. 2 U.S.C. §437f(a). The request must concern a specific transaction or activity that "the requesting person plans to undertake or is presently undertaking and intends to undertake in the future." 11 CFR 112.1(b). Such a request "shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made." 11 CFR 112.1(c). The Office of General Counsel shall determine if a request is incomplete or otherwise not qualified as an advisory opinion request. See 11 CFR 112.1(d).

In view of the above requirements, this Office will need further detail regarding the options set forth above. Specifically:

- (1) Please state the amount of cash-on-hand and net liabilities as of April 15, 2003, the date on which Senator Fitzgerald announced that he would not seek re-election to the United States Senate in 2004.
  - (a) With regard to the cash-on-hand to be used for the four contemplated options, please identify generally the source(s) (*i.e., individual contributions, personal funds of the candidate, political committee contributions, interest income, etc.*) and corresponding amounts of each source. Please specify the amount, if any, of this cash-on-hand that is the result of contributions from contributors who have already met the contribution limits for the 1998 elections.
  - (b) Excluding the \$2.1 million owed to LaSalle Bank, N.A., for credit extended for the 1998 campaign, please state the amounts of the remaining net liability incurred or attributed to the 1998 campaign, the 2004 primary election, and the 2004 general election.
- (2) With respect to each of the four options you contemplate, please state the order in which the Committee, if permitted by the Act and Commission regulations, intends to make those payments, indicating the amount of the cash-on-hand that the Committee intends to use for each option.
- (3) With respect to your contemplated Option 4 (refunds to contributors), please state whether the Committee is contemplating issuing refunds to contributors other than those who made contributions for the 2004 primary

election. Please state the amount of the cash-on-hand, if any, that the Committee intends to refund to 1998 campaign contributors or to any persons other than 2004 primary election contributors.

If you have any questions about the advisory opinion process or this letter, please contact Richard Ewell, an attorney in this Office, at 202-694-1585.

Sincerely,

  
Rosemary C. Smith  
Acting Associate General Counsel



2550 M Street, NW  
Washington, DC 20037-1350  
202-457-8000

Facsimile 202-457-6315  
www.pattonboggs.com

Benjamin L. Ginsberg  
(202) 457-6405  
bginsberg@pattonboggs.com

September 26, 2003

Ms. Rosemary C. Smith  
Acting Associate General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20463

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FEDERAL ELECTION  
COMMISSION  
OFFICE OF GENERAL  
COUNSEL

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Dear Ms. Smith:

This letter is in response to your July 18, 2003 letter seeking further detail concerning the options contemplated in the Fitzgerald for Senate Committee's advisory opinion request. The questions you posed and the Committee's responses (in bold) are set forth below:

- (1) Please state the amount of cash-on-hand and net liabilities as of April 15, 2003, the date on which Senator Fitzgerald announced that he would not seek re-election to the United States Senate in 2004.

Cash-on-hand 4/15/03 \$984,812.09

Net Liabilities 4/15/03 \$854,664.86

- (a) With regard to the cash-on-hand to be used for the four contemplated options, please identify generally the source(s) (i.e., individual contributions, personal funds of the candidate, political committee contributions, interest income, etc.) and corresponding amounts of each source. Please specify the amount, if any of this cash-on-hand that is the result of contributions from contributors who have already met the contribution limits for the 1998 elections.

Individual \$334,000.00

(approximately \$84,000 of this amount is from contributors who have met the contribution limits for the 1998 election as of August 1, 2003)

Personal Funds \$0

Political Committee \$187,000.00

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**Interest** **\$5,000.00**

- (b) Excluding the \$2.1 million owed to LaSalle Bank, N.A., for credit extended for the 1998 campaign, please state the amounts of the remaining net liability incurred or attributed to the 1998 campaign, the 2004 primary election and the 2004 general election.

**1998 General (disputed)** **\$45,525.00**

**1998 General (to candidate)** **\$772,500.00**

**2004 Primary** **\$36,639.86**

- (2) With respect to each of the four options you contemplate, please state the order in which the Committee, if permitted by the Act and Commission regulations, intends for those payments, indicating the amount of the cash-on-hand that the Committee intends to use for each option.

**Senator Fitzgerald respectfully requests an opinion on the propriety of the contemplated uses irrespective of amounts, after which precise allocations will be made.**

- (3) With respect to your contemplated Option 4 (refunds to contributors), please state whether the Committee is contemplating issuing refunds to contributors other than those who made contributions for the 2004 primary election. Please state the amount of cash-on-hand, if any, that the Committee intends to refund to 1998 contributors or to any persons other than 2004 primary election contributors.

**The Committee has already returned approximately \$312,000 to its 2004 general election contributors, which are all contributions received for the 2004 general election. The Committee does not anticipate making any refunds to 1998 general election contributors.**



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Sincerely,

A handwritten signature in cursive script that reads 'Benjamin L. Ginsberg'.

Benjamin L. Ginsberg

A handwritten signature in cursive script that reads 'Glenn M. Willard'.

Glenn M. Willard